

28 January 2011

General Manager
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: executiveremuneration@treasury.gov.au

Dear Sir / Madam

Exposure draft - Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011

We refer to the exposure draft of the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011 (**Bill**) and associated explanatory material.

Computershare Investor Services Pty Limited (**Computershare**) is pleased to make this submission in its capacity as the leading provider of meeting and related services in Australia, with the aim of providing Treasury with information on some key practical issues in implementing the proposed reforms based on our experience. Computershare does not make this submission on behalf of its listed company clients or its listed parent company.

Background

The Computershare Group is the global leader in securities registration and meeting services and is also the world's most experienced provider of electronic voting and registration at Annual General Meetings, with its technology used in thousands of annual general meetings in over fifteen countries.

Computershare Investor Services Pty Limited is a member of the Computershare Group. Computershare provides meeting services for over 1,100 clients throughout Australia each year. In 2009, Computershare conducted over 900 Annual General Meetings, 90 Extraordinary General Meetings, 240 General Meetings and 20 Scheme Meetings. Computershare currently manages the registers for 14 of the top 20 ASX companies, 33 of the top 50 ASX companies and 66% of the top 200 ASX companies, which includes managing their meeting services requirements.

Overview

The proposed reforms raise a number of practical issues for the conduct of meetings, including:

- (a) how to put the proposed 'spill resolution' at the same meeting as the 'second strike' remuneration report resolution on which it is contingent;
- (b) whether a proxy who has been appointed is compelled to attend and vote at a meeting; and
- (c) that the exclusion of undirected proxies appointing the Chair from the remuneration report resolution and spill resolution is likely to disenfranchise a large number of holders who make undirected proxy appointments.

We suggest that it would be helpful for companies to have the benefit of guidance on how to manage these issues and meet the expectations of security holders, both those who attend and vote in person at the meeting and those who vote by proxy.

The 'two strikes' test

Where a company has received a 25% 'against' vote on the resolution to adopt its remuneration report (the 'first strike'), the Bill proposes a 'spill resolution' contingent on the resolution to adopt the remuneration report receiving at least a 25% 'against' vote at the next AGM (the 'second strike'). The Bill proposes that the spill resolution will be considered at the same meeting as the second strike.

Holding the spill resolution contingent on the second strike at the same meeting may raise the following practical issues for companies:

- (a) how to meet the expectations of security holders who vote by proxy; and
- (b) how to meet the expectations of security holders who vote in person at the meeting.

Security holders who vote by proxy

Where direct voting is not available, most security holders who vote will do so by proxy and therefore their understanding of the contingent resolution will be critical to achieving an informed result.

Where a company's remuneration report receives a 'first strike', the notice of meeting and proxy form for the following year's meeting will need to include the spill resolution, even though it may not ultimately be required. The resolution would need to be expressed clearly in the notice of meeting and proxy form as being contingent upon the remuneration report resolution receiving at least a 25% 'against' vote.

There is a risk that this disclosure is confusing to security holders as they are being asked to vote on a resolution that may not be required. In our experience, many security holders are currently confused by the Chair voting exclusion statement required by ASX Listing Rules 14.2.3A and 14.2.3B. In our experience, a high proportion of security holders' votes are not counted because they do not tick this box.

These security holders will also not have the benefit of any discussion at the meeting in relation to the spill resolution. The company will also have to communicate with security holders about the outcome of the meeting, including where the spill resolution was put to the meeting, but ultimately not required. Security holders who did not vote or who voted by proxy may have a keen interest in voting on the spill resolution given the serious nature of what is being proposed.

Security holders who attend and vote at the meeting

We anticipate that the majority of companies will conduct the voting on these resolutions by poll rather than by a show of hands to allow the full voting power of each member to be exercised, including members voting by proxy, and to determine whether the threshold has been achieved. This is likely to have the practical effect of increasing the length of meetings, which may not otherwise go to poll. This also means that voting cards will have to be prepared to cover the spill resolution as well as other resolutions put to the meeting.

The results of a poll are not available immediately unless an electronic voting system has been used, as the returning officer will need time to conduct the poll, verify and count the poll papers and proxy forms.

This is likely to have the practical outcome that:

- (a) if the chair determines that the vote on the spill resolution will not be conducted until the outcome of the remuneration report vote is known, then security holders could have to wait for

- an extended period of time, possibly several hours, before the results are known and the spill resolution can be conducted; or
- (b) if the chair decides to conduct the vote on the spill resolution before the outcome of the remuneration report is known, security holders will be asked to vote on the spill resolution before it is known whether it will be required.

We anticipate that for many companies it will be preferable to hold the poll on the remuneration report resolution and the spill resolution together and therefore the results of both resolutions will not be known until after the meeting. Again, companies will need to manage any security holder expectations for a result on a spill resolution that was put to the meeting, but ultimately not required.

It may also be challenging for a company to call, and security holders to attend and participate in, an extraordinary general meeting held within 90 days of an AGM, particularly where the AGM is held towards the end of the year.

Preventing cherry picking of proxies

In our view it would be useful for the explanatory materials to clarify that the new law will not compel a proxy to attend a meeting. The Regulatory Impact Statement suggests that the intention is that if a proxy is unable to attend a meeting, all directed proxies would continue to default to the Chair. A proxy may not be aware that they have been appointed or for some other reason may not be able to attend the meeting.

Excluding undirected proxies appointing KMP or their closely related parties

Under the Bill, undirected proxy appointments to the Chairman of the company or other key management personnel (KMP) or their closely related parties will be excluded from the remuneration report resolution and the spill resolution. This means that potentially a large number of security holder votes will be excluded. While undirected proxy votes do not comprise a large proportion of votes cast, we understand that a relatively large number of holders (by number) make undirected proxy appointments.

For example, of votes cast on the remuneration report resolution put to 2010 AGMs of ASX top 20 companies¹ we estimate that undirected proxy votes comprised on average 2.52% of votes cast, but on average 29.01% of holders voting submitted an undirected proxy. This suggests that many holders may be disenfranchised if undirected proxy votes appointing the Chairman or KMP or their closely related parties are excluded from the remuneration report resolution and the spill resolution.

Computershare would be pleased to provide any further assistance to Treasury on the matters discussed in this letter or any of the other proposed reforms. Please contact Dominic Horsley on 03 9415 5162 or dominic.horsley@computershare.com.au, should you wish to discuss any matters further.

Yours faithfully



Greg Dooley
Managing Director

¹ This data only relates to companies where Computershare is the share registrar.